

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
Civil No.: 3:22-cv-584

MARY IMMEN AS ADMINISTRATOR
OF THE ESTATE OF MIGUEL ANGEL
MARTINEZ,

Plaintiff,

vs.

UNITED RENTALS (NORTH
AMERICA), INC.,

Defendant.

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendant United Rentals (North America), Inc. (“URNA”) respectfully files this Notice of Removal of *Mary Immen as Administrator of the Estate of Miguel Angel Martinez v. United Rentals (North America), Inc.*, file No. 22-CVS-14095, which is pending in the General Court of Justice, Superior Court Division, County of Mecklenburg, North Carolina to the United States District Court for the Western District of North Carolina. This Court has original jurisdiction under 28 U.S.C. §§ 1332(a) and 1441, *et seq.*, because complete diversity of citizenship exists between the parties and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

I. PROCEDURAL AND FACTUAL BACKGROUND

1. On August 26, 2022, Plaintiff filed an action captioned *Mary Immen as Administrator of the Estate of Miguel Angel Martinez v. United Rentals, Inc.* in the General Court of Justice, Superior Court Division, County of Mecklenburg, North Carolina. A true and correct copy of the Summons and original Complaint are attached as Exhibit A.

2. In the original Complaint, Plaintiff incorrectly named United Rentals, Inc. as the defendant.

3. On or about September 23, 2022, Plaintiff amended its Complaint by naming URNA as the defendant in place of United Rentals, Inc. Plaintiff sent a copy of the Amended Complaint to URNA's counsel, Paul Osowski, on September 26, 2022 via electronic mail. A true and correct copy of the Amended Complaint is attached as Exhibit B.

4. On October 3, 2022, URNA's counsel formally accepted service of the Amended Complaint. A true and correct copy of URNA's Acceptance of Service of Process is attached as Exhibit C.

5. In the Amended Complaint, Plaintiff alleges, *inter alia*, that Decedent Miguel Angel Martinez ("Decedent") died on July 17, 2021, while operating a 2019 Club Car Carryall 1700 4x4 (S/N: SD 1932-994496) (the "Vehicle"), leased by URNA to Decedent's employer, The Conlan Company. (Am. Compl. ¶¶ 9–13.)

6. Plaintiff further alleges that the Vehicle had defective brakes which combined with URNA's alleged negligence and caused the Vehicle to roll over and kill Decedent. (*Id.* ¶¶ 15-16, 18-20.)

7. Plaintiff's sole claim for relief against URNA is negligence. Plaintiff brings this action under N.C. Gen. Stat. § 28A-18-2 as a claim for damages arising from the alleged wrongful death of Decedent. (*Id.* ¶¶ 17–22.)

II. DOCUMENTS FILED WITH REMOVAL

8. As noted above, true and correct copies of the Summons and original Complaint, Amended Complaint, and URNA's Acceptance of Service of Process are attached hereto as Exhibit A, Exhibit B, and Exhibit C, respectively, pursuant to 28 U.S.C. § 1446(a).

9. No other process, pleadings, orders, or other documents have been served upon URNA as of this date, and URNA has filed no other motions nor served any other documents as of this date.

III. THE REMOVAL IS TIMELY

10. The initial pleading setting forth the claim for relief, which was filed on August 26, 2022, was not removable by URNA because URNA was not named as a defendant in the initial pleading.

11. URNA's counsel first received a copy of the Amended Complaint via electronic mail on September 26, 2022 and formally accepted service on October 3, 2022.

12. Accordingly, this Notice of Removal is filed within 30 days of receipt by URNA of the pleading "from which it may first be ascertained that the case is one which is or has become removable" as required by 28 U.S.C. § 1446(b)(3).

13. This removal is also being filed within one year of the date on which Plaintiff filed this lawsuit pursuant to 28 U.S.C. § 1446(c)(1).

14. Therefore, removal of this action is timely.

IV. AMOUNT IN CONTROVERSY EXCEEDS \$75,000

15. Plaintiff brought this action as a wrongful death action under N.C. Gen. Stat. § 28A-18-2.

16. Accordingly, in the Amended Complaint, Plaintiff seeks the following damages pursuant to N.C. Gen. Stat. § 28A-18-2:

- a. Expenses for care, treatment and hospitalization incident to the injury resulting in death;
- b. Compensation for the pain and suffering of the Decedent;
- c. The funeral expenses of the Decedent;

- d. The present monetary value of the Decedent to the persons entitled to receive the damages recovered, including without limitation compensation for loss of the reasonably expected:

- (1) Net income of the Decedent;
- (2) Services, protection, care and assistance of the Decedent, whether voluntary or obligatory, to the persons entitled to the damages recovered;
- (3) Society, companionship, comfort, guidance, kindly offices and advice of the Decedent to the persons entitled to the damages recovered.

(Am. Compl. ¶ 21(a.–d.).)

17. Therefore, upon information and belief, Plaintiff's alleged damages are in excess of \$75,000, which is the jurisdictional amount in controversy required under 28 U.S.C. § 1332.

V. THIS COURT HAS SUBJECT MATTER JURISDICTION UNDER 28 U.S.C. § 1332 – DIVERSITY OF CITIZENSHIP

18. Removal under 28 U.S.C. § 1441 is appropriate because this is an action over which this Court would have original jurisdiction pursuant to 28 U.S.C. § 1332 (a)(1). The amount in controversy exceeds \$75,000, exclusive of interests and costs, and complete diversity of citizenship exists between Plaintiff and Defendant. *See* 28 U.S.C. §§ 1332 (a)(1), 1441.

19. Upon information and belief, Plaintiff is a citizen of North Carolina who resides in Mecklenburg County. (*See* Am. Compl. ¶ 2.)

20. Defendant URNA is, and at the time of this action was commenced was, a corporation organized under the laws of the state of Delaware with its principal place of business in Connecticut. URNA therefore is a citizen of Delaware and Connecticut for the purposes of this Court's diversity jurisdiction. *See* 28 U.S.C. § 1332(c)(1).

21. Accordingly, diversity of citizenship exists between Plaintiff and Defendant.

VI. VENUE OF THIS REMOVAL IS PROPER

22. The United States District Court for the Western District of North Carolina includes the county in which the state court action is now pending (Mecklenburg County). *See* 28 U.S.C. § 113(a).

23. Venue of this removal is proper because this is the “district and division embracing the place where such action is pending.” 28 U.S.C. § 1441(a). Thus, removal to this Court is appropriate under 28 U.S.C. § 1446(a).

VII. FILING AND SERVICE OF REMOVAL

24. A copy of this Notice of Removal is being served on Plaintiff’s Counsel and filed with the General Court of Justice, Superior Court Division, County of Mecklenburg, North Carolina, pursuant to 28 U.S.C. § 1446(d).

VIII. PRESERVATION OF RIGHTS

25. By removing this action to this Court, URNA does not waive any defenses, objections or motions available to it under state or federal law. URNA expressly reserves the right to move for dismissal of Plaintiff’s claims pursuant to Rule 12 of the Federal Rules of Civil Procedure.

26. If any question arises as to the propriety of this removal, URNA requests the opportunity to conduct discovery or briefing as to any disputed issues and to present oral argument in support of its position that this action is properly removable.

WHEREFORE, United Rentals (North America), Inc. hereby removes the above-captioned action from the General Court of Justice, Superior Court Division, County of Mecklenburg, North Carolina, to the United States District Court for the Western District of North Carolina.

Respectfully submitted this the 26th day of October, 2022.

/s/Paul J. Osowski

Paul J. Osowski

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America), Inc.*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has served a copy of the foregoing document upon counsel of record via CM/ECF and first class postage-prepaid mail to the following:

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This the 26th day of October, 2022.

/s/Paul J. Osowski

Paul J. Osowski